

20 April 2020

SARNZ/HIANZ has received many inquiries from members regarding rental of hire equipment on site during the COVID-19 lockdown period.

On 6th April, MBIE published guidance for public sector agencies dealing with the contractual implications for projects of the COVID 19 lockdown period. The guidance has been enacted by Government Agencies such as NZTA and sets a precedence which may be followed by the private sector whereby parties to contract and the supply chain will work collaboratively rather than litigiously. A key section of the document relates to suspension/variation due to the lockdown and states:

“These actions by the New Zealand Government would constitute the making of a statute and/or regulation giving rise to a variation claim under clause 5.11.10. On this basis, whether the Engineer has issued a suspension notice under 6.7.1 or not, the Contractor will be entitled to a variation under 5.11.10 as a result of new laws and regulation recently made relating to COVID-19. Any increase in costs arising from a change in law under 5.11.10 is treated as a variation, much the same way as a suspension instructed by the Engineer under 6.7.1 is treated as a variation.”

On this basis it can be claimed that there is a fair case to claim for actual costs during the lockdown. The makeup of costs can be quite subjective, to simplify the process a working group from the general hire industry and the scaffold industry formed to determine what an average holding cost might be as a percentage of general hire. A formula was agreed based on fixed overheads of the business, actual depreciation of the asset and finance costs, reaching an average of 45-50% of normal hire.

This holding cost should be treated as a starting point and adjusted to consider the financial implications to the overall project (client) and what is fair and reasonable. These adjustments should be negotiated on a case by case in good faith.

This position has been discussed with Master Builders who agree this is a reasonable position in principle, subject to each case being negotiated in good faith.

Yours Sincerely,



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